

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
July 10, 2009 Session

**HERITAGE EARLY CHILDHOOD DEVELOPMENT CENTER, INC.
ET AL. v. TENNESSEE DEPARTMENT OF HUMAN SERVICES**

**Appeal from the Chancery Court for Davidson County
No. 07-1808-III Ellen H. Lyle, Chancellor**

No. M2008-02134-COA-R3-CV - Filed September 22, 2009

This appeal arises from the permanent termination of two child care centers' participation in the federally funded "Child Care Certificate Program." The Tennessee Department of Human Services required each child care center to sign a "Regulated Provider Agreement" to participate in the Program. Pursuant to the Agreement, the child care centers were to comply with the Department's Policy & Procedures Manual for the Program. When the Department made the determination that the child care centers had failed to comply with the Manual, the Department unilaterally and permanently terminated their participation in the Program. Thereafter, the two child care centers (the "petitioners") filed a Petition for Declaratory Judgment seeking to declare the Department's Policy & Procedures Manual void because the policies and procedures therein constituted "rules," as that term is defined in the Uniform Administrative Procedures Act (APA), and the Manual had not been promulgated in accordance with the APA; therefore, the Manual could not be the basis for termination of their Provider Agreements or their participation in the Program. The petitioners also contended that they were deprived of due process and equal protection. After the Department filed an Answer, the petitioners filed a Tenn. Civ. P. Rule 12.03 Motion for Judgment on the Pleadings. Following a hearing, the Chancery Court found that the termination of the petitioners from the Program was "void because, as applied in this case, the program manual conflicted with due process requirements under Tennessee statutes and regulations." The Chancellor did not rule on whether the Manual should have been promulgated in accordance with the APA. On appeal, the Department contends the Chancellor erred in finding that the petitioners should have been afforded due process because the Department was exercising a contractual right to terminate the centers for breach of the agreement, to which no right of due process attached. We have concluded that the policies and procedures relied upon by the Department to terminate the petitioners from the Program constitute "rules," as that term is defined in Tenn. Code Ann. § 4-5-102 of the APA, which were not promulgated as the APA requires. Because the "rules" relied upon by the Department to permanently terminate the petitioners' participation in the Program constitute rules, which were not promulgated in accordance with the APA, they are invalid. Accordingly, they cannot serve as the basis for the termination of the petitioners' participation in the Program. We, therefore, affirm the grant of the petitioners' Tenn. Civ. P. Rule 12.03 Motion for Judgment on the Pleadings.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed

FRANK G. CLEMENT, JR., J., delivered the opinion of the court, in which RICHARD H. DINKINS, J., and DAVID H. WELLES, SP. J., joined.

Robert E. Cooper, Jr., Attorney General and Reporter; Michael E. Moore, Solicitor General; and Amy T. McConnell, Assistant Attorney General, for the appellant, Tennessee Department of Human Services.

Mimi Phillips and R. H. “Chip” Chockley, Memphis, Tennessee, for the appellee, Heritage Early Childhood Development Center, Inc., and Heritage Enrichment Center, Inc.

OPINION

The Child Care Certificate Program (“Program”) is a program authorized by 42 U.S.C. § 9801 *et seq.* and funded through federal block grants. The purpose of the Program is to provide child care assistance to low-income working parents for the benefit of the parents and their children who need child care. In Tennessee, the Department of Human Services acts as the “Lead Agency” for the Program by making voucher payments for eligible children directly to participating child care centers. *See* 42 U.S.C. § 9858b; Tenn. Comp. R. & Regs. R. 1240-4-7-.02.

The petitioners, Heritage Early Childhood Development Center, Inc. and Heritage Enrichment Center, Inc., (hereinafter collectively the “petitioners”), are child care centers operating in low-income neighborhoods in Memphis, Tennessee. In order for the petitioners to participate in the Program, they were required to sign a “Regulated Provider Agreement.” This Agreement required the petitioners to fully comply with the Department’s Policy and Procedures Manual for the Program, which was incorporated therein by reference. The Agreement further stated that the Department had the right to terminate the petitioners from the Program should they fail to fulfill or violate provisions stated in the Manual. The Provider Agreement required only the signature of the participating child care center. Each petitioner signed a separate but identical Provider Agreement. The Department did not sign the Agreement and no space was designated or provided for the Department to sign the Agreement.

In August 2006, Program Auditors from the Department visited both offices of the petitioners. At Heritage Early Childhood Development Center, Inc.¹ (HECDC), the auditors found that the center had failed to notify the Department of a “change in rates” and failed to require the parents to make the required co-payments. On January 3, 2007, the director of the facility, Tara Cherry,² received a letter from the Department advising that the “internal audit” had revealed inconsistencies in the attendance of children, which resulted in questioned costs of \$7,519.20. She was given ten days to respond. Ms. Cherry replied in a January 19, 2007 letter, wherein she

¹Heritage Early Childhood Development Center, Inc., is a not-for-profit corporation with its principal place of business at 645 Decatur Street, Memphis, Tennessee.

²Tara Cherry was the Director of both HECDC and HEC.

questioned discrepancies between program deficiencies stated by the auditor during the August 2006 visit and deficiencies stated in the Department's recent letter.

Deficiencies were also noted at the Heritage Enrichment Center, Inc.³ (HEC) facility during the August 2006 audit, and a letter regarding the deficiencies was sent to HEC on August 28, 2006. This letter informed HEC that the violations had been presented to the Department's "Provider Review Committee," which had chosen not to take any adverse action against HEC.

In a subsequent letter to HEC from the director of the internal audit, dated January 8, 2007, HEC was informed that an internal audit showed an overpayment to HEC of \$36,443.30 for March, April, and May of 2006. HEC responded in a January 19, 2007 letter contesting the alleged overpayment. HEC also requested a review of the Department's records on HEC and an interview with the Department in order to resolve the matter. HEC's representatives met with the internal audit director and another Department employee in Nashville on February 12, 2007. At this meeting, HEC was instructed to work out a repayment plan for the HEC overpayment by meeting with another Department employee.

Eight days later, on February 20, 2007, HECD and HEC each received a letter from the Department stating that the Department's Provider Review Committee had decided to "permanently terminate" the petitioners' enrollment in the Program and termination was to take effect immediately. Neither HECD or HEC had been afforded an opportunity to participate in the Provider Review Committee meeting; nevertheless, the decision was deemed final and unappealable pursuant to the Department's Policy and Procedures Manual for the Program.

The Department's Manual provided that such decisions were deemed final and unappealable. The Manual also provided that a provider could request the Program Director to review the actions of the Committee to assure that Department's procedures were followed. The petitioners timely requested this review. On February 26, 2007, counsel for the petitioners received a telephone call from a Department representative who advised that the requested review had been completed, that Department procedures were followed, and that the decision to permanently terminate the petitioners from the program was final.⁴

The petitioners then served a Petition for Declaratory Judgment on the Department pursuant to Tenn. Code Ann. § 4-5-223, seeking to have the Manual declared void. The Department received the Petition on May 4, 2007, but took no action to set the petition as a contested case during the

³ Heritage Enrichment Center, Inc., is a for profit corporation with its principal place of business at 982 Jackson Avenue, Memphis, Tennessee.

⁴ Following this adverse decision, HECD and HEC both closed their facilities and went out of business. This was because they were in a low-income neighborhood and the enrollment of both child care centers relied solely on the Program voucher payments.

following 60 days; accordingly, the Department was deemed to have denied the petition.⁵ See Tenn. Code Ann. § 4-5-223(c). On August 10, 2007, the petitioners filed their Petition for Declaratory Judgment with the Chancery Court of Davidson County. Specifically, the petitioners were seeking a Declaratory Judgment holding that the Manual was void pursuant to Tenn. Code Ann. § 4-5-216 in that it contained substantive rules – particularly those under the section entitled “Provider Review Committee” – not adopted in compliance with the rule making procedures set forth in Tenn. Code Ann. §§ 4-5-201-227 of the APA. The petitioners further contended that the Manual’s procedures directly conflicted with and circumvented specific statutory provisions which governed the situations to be regulated by the Manual, specifically Tenn. Code Ann. § 71-3-502(j)(6)(C) and Tenn. Code Ann. § 71-3-502(j)(7). By employing the “Provider Review Committee” mechanism set forth in the Manual, the petitioners contended, the Department restricted and effectively rendered useless the petitioners’ licenses as child care centers without the appeal procedures and due process safeguards afforded them as licensees in the properly promulgated regulations in Tenn. Comp. R. & Regs § 1240-4-5-.05.

The Department filed an Answer denying the averments in the Petition, asserting that the Manual did not contain rules that require APA scrutiny, and asserting that the rights of the parties were exclusively controlled by contract, the Provider Agreement, of which the petitioners were in breach.

Thereafter, the petitioners filed their Tenn. R. Civ. P. 12.03 Motion for Judgment on the Pleadings to declare invalid the Department’s termination of the petitioners’ participation in the Program. On June 19, 2008, the trial court issued its Memorandum and Order. The court held that the “summary procedure for termination provided for in the Program Manual conflicts with the expanded due process procedures for restricting a childcare center from providing certain services provided for in the Tennessee regulations,” and, therefore, their termination from the Program under the authority of the Manual was void. The court rejected the petitioners’ equal protection claim finding that since they were not enrollees of the Program, they had failed to state a “cognizable equal protection claim.” As for the validity of the Manual, the trial court concluded that it did not have sufficient information to make that determination.

The Department then filed a motion to alter or amend the order following which the trial court issued a second Order and Memorandum to “clarify” but reaffirm its ruling in the first order. In the second order, which incorporated the court’s findings and conclusions in the previous order, the court elaborated on its previous ruling regarding the due process violation stating that the application of the Manual to “the specific facts of this case” resulted in the due process violation. The court held that because the petitioners served only low-income communities, which resulted in the entirety of their clientele being dependent on the Program, termination of the petitioners from the Program rendered their child care licenses useless. As a consequence, the court found the petitioners were entitled to but were denied due process. The court then stated that it did not adopt

⁵ Pursuant to Tenn. Code Ann. § 4-5-223(c), if any agency does not set a petition for declaratory order for a contested case hearing within 60 days of receipt of the petition, the agency is deemed to have denied the petition. Jurisdiction is then conferred upon the chancery court. Tenn. Code Ann. § 4-5-225. Assistant General Counsel for the Department sent a letter dated July 31, 2007, to the petitioners officially denying the petition for a declaratory order.

the petitioners' argument that the Manual was void, stating it would need additional facts and information to rule on the issue. As for their equal protection argument, the court stated that it denied their equal protection argument because the petitioners were not the intended beneficiaries of the Program – the low-income working families were. This appeal followed.

The Department and the petitioners raise issues on appeal. The Department contends the trial court erred in finding that the petitioners should have been afforded due process because, the Department asserts, the petitioners possessed no due process or property rights in their participation in the Program. The Department further contends its relationship with the petitioners was contractual in nature, and that the termination of the petitioners from the Program was within the contractual rights of the Department as stated in the Provider Agreement. For their part, the petitioners contend that the trial court erred in not finding a violation of their equal protection rights and not finding that the Manual was void because the rules therein were not promulgated as required by the APA. The petitioners assert that while they did not possess a specific property right as participants in the Program, they have a property interest in their child care licenses, which were restricted by their “permanent termination” from the Program.

STANDARD OF REVIEW

This action comes before this court following a Tenn. R. Civ. P. 12.03 motion for judgment on the pleadings. “In reviewing a trial court’s ruling on a motion for judgment on the pleadings, we must accept as true ‘all well-pleaded facts and all reasonable inferences drawn therefrom’ alleged by the party opposing the motion.” *Cherokee Country Club, Inc. v. City of Knoxville*, 152 S.W.3d 466, 470 (Tenn. 2004) (quoting *McClenahan v. Cooley*, 806 S.W.2d 767, 769 (Tenn. 1991)). “[C]onclusions of law are not admitted nor should judgment on the pleadings be granted unless the moving party is clearly entitled to judgment.” *Id.* (quoting *McClenahan*, 806 S.W.2d at 769).

ANALYSIS

THE CHILD CARE CERTIFICATE PROGRAM

The Child Care Certificate Program is a program authorized by 42 U.S.C. § 9801 *et seq.* and funded through federal block grants. The purpose of the Program is to provide child care assistance to low-income working parents. In Tennessee, the Department of Human Services acts as the “Lead Agency” for the Program by making voucher payments for eligible children directly to child care providers. *See* 42 U.S.C. § 9858b; Tenn. Comp. R. & Regs. R. 1240-4-7-.02.

The petitioners were eligible to participate in the Program due to the fact they possessed a license issued by the Department of Human Services;⁶ nevertheless, to participate in the Program,

⁶The requirements and information regarding the Program are contained within the Program Policy & Procedures Manual, revised January 2007, and prepared by the Tennessee Department of Human Services. The 2007 Manual is the successor to the July 1, 2005 Regulated Provider Policy Guidebook for the Child Care Certificate Program
(continued...)

they were required to apply for enrollment in the local Program, be approved by the Department, and sign a Regulated Provider Agreement (Form HS-2894).⁷

The Regulated Provider Agreement is a two-page adhesion form. The Regulated Provider Agreement form provides a place for an authorized representative of the child care center to sign, but the form provides no place for the Department to sign. The only information to be provided on the form by the child care center is the name of the child care center, its address and phone number, its federal employer identification number (SSN/FEIN), the name of the Director of the child care center, and a notation that the center is “licensed” by the Department.

The Regulated Provider Agreement form sets forth conditions that each provider must follow in order to participate and to continue participating in the Program. One of the relevant conditions is compliance with the provisions of the Manual, which is incorporated by reference. The consequences for failing to comply with the Manual are addressed in Paragraph 15 of the Provider Agreement, which states:

That DHS shall have the right to sanction any Provider that fails to properly fulfill its obligations under this Agreement, engage in acts that allow for the receipt of excessive payments, or violates the provisions of the Department of Human Services Certificate Program Provider Policy & Procedures Manual. Sanctions may include - a 10% reduction in provider rates, or the suspension or termination of this provider agreement.

(Emphasis added). The Manual also provided that such decisions, including termination of the provider agreement, would be made by the Provider Review Committee, and the Committee’s decisions were final and unappealable.

The Manual covers a variety of topics; it is divided into five sections that cover the following subjects: Certificate Program Eligibility, Case Management, Program Management, and two sections which cover Provider Policies. The provisions stated in the Manual affect the parents of eligible children and child care providers. In the sections covering the providers, a variety of regulations are set forth including: the enrollment procedures for providers in the Program, regulations regarding child attendances and absences, regulations governing provider rates and charges, regulations covering transfers of children from one provider to another, the effect of a Department license revocation on the enrollment within the Program, the federal compliance requirements, and regulations covering capacity limitations.

THE ADMINISTRATIVE PROCEDURES ACT

⁶(...continued)
issued by the Department.

⁷The Manual states that if any changes to the Department’s requirements are made, a provider must sign a new enrollment agreement or be terminated from the Program.

Tennessee's Uniform Administrative Procedures Act expressly provides that "[a]ny agency rule not adopted in compliance with the provisions of this chapter shall be void and of no effect and shall not be effective against any person or party nor shall it be invoked by the agency for any purpose." Tenn. Code Ann. § 4-5-216 (emphasis added). The policies and procedures set forth in the Manual which were relied upon by the Department to terminate the petitioners' provider agreements were not promulgated pursuant to the rule making procedures of the APA codified at Tenn. Code Ann. §§ 4-5-201-227. Thus, we must determine whether the policies and procedures the Department relied upon to terminate the petitioners from participating in the Program constitute "rules" as that term is defined in the APA.

The term "rule" is statutorily defined in the APA to mean "each agency statement of general applicability that implements or prescribes law or policy or *describes the procedures or practice requirements of any agency.*" Tenn. Code Ann. § 4-5-102(10)(emphasis added). Further, the statutory definition of "Rule" does not include:

- (A) Statements concerning only the internal management of state government and not affecting private rights, privileges or procedures available to the public;
- (B) Declaratory orders issued pursuant to § 4-5-223;
- (C) Intra-agency memoranda;
- (D) General policy statements that are substantially repetitious of existing law;
- (E) Agency statements that:
 - (i) Relate to the use of the highways and are made known to the public by means of signs or signals; or
 - (ii) Relate to the curriculum of individual state supported institutions of postsecondary education or to the admission or graduation of students of such individual institutions but not to the discipline or housing of students;

Tenn. Code Ann. § 4-5-102(10)(A)-(E).

TENN. CODE ANN. § 71-1-105

In addition to the Administrative Procedures Act, we also find Tenn. Code Ann. § 71-1-105 pertinent to this issue. In this statutory provision, the Legislature provided that when the Department is engaged in the administration or supervision of the public welfare activities within the state, the Department *shall*:

- (B) Establish criteria for the approval of persons or entities who receive any state or federal funds for the provision of care for adults or children whether those persons or entities are licensed or approved as provided in chapter 2, part 4 or chapter 3, part 5, of this title, or whether they are otherwise unlicensed, *and, if determined by the department to be necessary, provide for such criteria in regulations promulgated pursuant to the Uniform Administrative Procedures Act, compiled at title 4, chapter 5, part 2; . . .*

Tenn. Code Ann. § 71-1-105(5)(B) (emphasis added).

THE MANUAL REQUIRED APA APPROVAL

The Department apparently decided it was not necessary to promulgate the relevant criteria as rules pursuant to the Uniform Administrative Procedures Act. We, however, have determined it was necessary for the criteria established by the Department to be promulgated pursuant to the APA, because the criteria the Department established constitute “rules” as that term is defined in Tenn. Code Ann. § 4-5-102(10). We find that the relevant provisions in the Manual do not constitute a general agency policy statement substantially repetitive of existing law, *see Cosby v. State of Tenn. Dept. of Human Services*, No. M2003-02696-COA-R3-CV, 2005 WL 2217072 (Tenn. Ct. App. Sept. 12, 2005). To the contrary, they describe the procedures for which a licensed child care center may be terminated from participating in a federally funded program, *see Op. Tenn. Att’y Gen. 01-091* (2001), and they are not in accordance with basic legal norms which require administrative regulations that establish standards for termination (debarment) and procedures, which will include notice of specific charges, opportunity to present evidence and to cross-examine adverse witnesses, which culminate in administrative findings and conclusions based upon the record properly made. *Gonzalez v. Freeman*, 334 F.2d 570 (U.S. App. D.C. 1964).

In *Cosby v. State of Tenn. Dept. of Human Services*, we addressed whether a policy established by the Department for the Families First Manual met the statutory definition of an APA rule. *Cosby*, 2005 WL 2217072, at *3. The action arose following the termination by the Department of a divorced mother of four children from the Families First Program based upon a policy guideline within the Manual which addressed how eligibility should be determined in joint custody situations. *Id.* at *2. Following a review of the policy in light of the APA definition of a rule, we determined that the “policy in the DHS manual is not ‘a general agency policy statement substantially repetitive of existing law.’” *Id.* at *7. Based upon that determination, we concluded that the so-called policy “cannot be applied to deny eligibility for Families First Assistance to Ms. Cosby and her family.” *Id.*

In 2001, the Tennessee Attorney General’s Office was called upon to opine whether the Pharmacy Based Immunization Guidelines adopted by the Tennessee Board of Pharmacy were “rules” under the APA, and, therefore void due to the Department’s failure to promulgate the guidelines as rules as required by the APA. *Op. Tenn. Att’y Gen. 01-091* (2001). The Attorney General opined that “[a] common sense reading of the Guidelines show that they describe the procedures or practice requirements of the Board – if any pharmacist does not comply with the ‘specifications’ enumerated in the Guidelines, they cannot participate in a pharmacy based immunization program. Thus, the Guidelines meet the general definition of ‘rule’ contained in Tenn. Code Ann. § 4-5-102(10).” *Id.*

In *Gonzalez v. Freeman*, the United States Court of Appeals for the District of Columbia was faced with the question of whether the Secretary of Agriculture’s decision in an administrative action to debar the plaintiffs from participating in certain contracts with the Commodity Credit Corporation, a governmental entity, was valid. *Gonzalez*, 334 F.2d at 572. The court first examined the authority the governmental entity, Commodity Credit, had to terminate its contracts with “irresponsible,

defaulting or dishonest contractors.” *Id.* at 576-77. The court held that the governmental agency had the authority to debar a participant; however, the court went on to note that as “to the debarment power there attaches an obligation to deal with uniform minimum fairness as to all.” *Id.* at 577. The court further concluded that the federal Administrative Procedures Act mandated that rules be promulgated, explaining:

The command of the Administrative Procedure Act is not a mere formality. Those who are called upon by the government for a countless variety of goods and services are entitled to have notice of the standards and procedures which regulate these relationships. Neither appellants nor others similarly situated can turn to any official source for guidance as to what acts will precipitate a complaint of misconduct, how charges will be made, met or refuted, and what consequences will flow from misconduct if found. In the contractual relationship shown by this record an experienced businessman could reasonably anticipate that some agency action might well be taken as a result of misuse of inspection certificates, but he could only speculate as to the nature of the action and the processes by which it would be effected. This condition does not accord with the provisions of the Administrative Procedures Act. On this record, there is neither the appearance nor the reality of fairness in the process by which debarment of appellants was accomplished. Disqualification from bidding or contracting for five years directs the power and prestige of government at a particular person and, as we have shown, may have a serious economic impact on that person. Such debarment cannot be left to administrative improvisation on a case-by-case basis. The governmental power must be exercised in accordance with accepted basic legal norms. Considerations of basic fairness require administrative regulations establishing standards for debarment and procedures which will include notice of specific charges, opportunity to present evidence and to cross-examine adverse witnesses, all culminating in administrative findings and conclusions based upon the record so made.

Id. at 578 (footnotes omitted). Because the Secretary’s action was not taken in accordance with any procedural regulations authorizing or governing debarment – meaning the “rules” upon which the debarment was based had not been promulgated in accordance with the Administrative Procedures Act – the plaintiffs’ debarment was invalid. *Id.* at 580.⁸

⁸The court also rejected the plaintiffs’ contention that their debarment violated due process standards stating:

Our interpretation of the Act under which appellees administer the affairs of Commodity Credit makes unnecessary our reaching these constitutional contentions. In short, we construe, the pertinent statutory scheme as authorizing debarment but as not authorizing debarment without either regulations establishing standards and a procedure which are both fair and uniform or basically fair treatment of appellants. The scope and detail of these regulations are for the agency to resolve in the first instance.

Gonzalez, 334 F.2d at 580.

With the adoption of the Manual for the Child Care Certificate Program, the Department established rules that the petitioners, and all child care centers (providers), must comply with in order to enroll and participate in the federally funded program or face termination (debarment) from the Program. The relevant provisions in the Manual addressed substantive procedures that the petitioners and all participating child care centers must follow concerning attendances and absences of each child participating in the Program, rates the providers may charge, procedures for the transfer of children from one provider to another, and capacity limitations, among other provisions that do not apply to internal operating procedures of the Department. These provisions clearly fit within the statutory definition of a rule. *See* Tenn. Code Ann. § 4-5-102. Although the Manual does contain some internal operating procedures that fall within the statutory exemption set forth at Tenn. Code Ann. § 4-5-102(a) for “[s]tatements concerning only the internal management of state government,” which do not require promulgation as rules under the APA, the provisions which describe the “procedures available to the public,” i.e., the child care providers, do not fall within any exception to the definition of a rule. *See* Tenn. Code Ann. § 4-5-102(A).

Like in *Cosby*, where this court held that the policies contained within the Families First Manual did not fall under an exception to the definition of a Rule under the UAPA, and, therefore were invalid, we so hold in this case. *See Cosby*; 2005 WL 2217072; *see also* Op. Tenn. Att’y Gen. 01-091 (stating that the Pharmacy Based Immunization Guidelines, which proscribed procedures by which a pharmacist must comply in order to participate in the program, must be promulgated as rules in accordance with the APA). We also find persuasive the reasoning of the court in *Gonzalez*, and find that the debarment of the plaintiffs from contracting with the governmental agency, the Commodity Credit Corporation, is analogous to the debarment – the termination – of the petitioners from participating in the Program. As was the case in *Gonzalez*, we believe that the mandate of Tennessee’s Uniform Administrative Procedures Act requires the promulgation of regulations concerning the procedures and criteria with which the child care providers must comply in order to participate in the Program. *See* Tenn. Code Ann. § 4-5-102(10); Tenn. Code Ann. § 71-1-105(5)(B); *Gonzalez*, 334 F.2d at 578-79.

IN CONCLUSION

The policies and procedures in the Department's Child Care Certificate Program Policy & Procedures Manual relied upon by the Department to terminate the petitioners from the Program constitute "rules," as that term is defined in Tenn. Code Ann. § 4-5-102(10) of the APA. The "rules" relied upon by the Department to terminate the petitioners from the Program were not promulgated as the APA requires. *See* Tenn. Code Ann. § 4-5-102(10); Tenn. Code Ann. § 71-1-105(5)(B). Because the rules relied upon by the Department to terminate the petitioners' participation in the Program were not promulgated as rules in accordance with the APA, they are invalid for any purpose; therefore, they cannot serve as the basis for the termination of the petitioners' participation in the Program. *See* Tenn. Code Ann. § 4-5-216.⁹ Based upon the clear meaning of Tenn. Code Ann. § 4-5-216, the grant of the petitioners' Tenn. Civ. P. Rule 12.03 Motion for Judgment on the Pleadings is affirmed and this matter is remanded for entry of a Declaratory Judgment to that effect.¹⁰

The judgment of the trial court is affirmed for the reasons stated herein and this matter is remanded with costs of appeal assessed against the Department of Human Services.

FRANK G. CLEMENT, JR., JUDGE

⁹"Any agency rule not adopted in compliance with the provisions of this chapter *shall be void and of no effect* and shall not be effective against any person or party nor shall it be invoked by the agency *for any purpose*." Tenn. Code Ann. § 4-5-216 (emphasis added).

¹⁰Due to our finding that the termination of the petitioners from the Program was invalid based upon our finding that the provisions within the Manual were not properly promulgated in accordance with the APA, the issues regarding due process and equal protection are rendered moot. We also find no merit to the Department's contention that the relationship between the Department and the petitioners is merely contractual.